HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Petition No.15566 of 2006

Between:

H. Venkatsewara Rao and others. …Petitioners

And

The Hyderabad Urban Development Authority, represented by its Vice-Chairman, Secunderabad and others. …Respondents

:: O R D E R ::

Counsel for the petitioners : Sri S. Ramachandra Rao, Senior Advocate assisted by Sri K.R. Prabhakar.

Counsel for respondent Nos.1 and 2 : Sri T. Niranjan Reddy

Counsel for respondent No.3 : Sri V. Ajay Kumar

Counsel for respondent No.4 : Sri P.S. Rajasekhar

9th August, 2007

Per G.S. Singhvi, C.J.

Whether the decision of the officers of Hyderabad Urban Development Authority (for short, 'HUDA') not to allow the petitioners to participate in the auction held on 21-7-2006 for the sale of Plot Nos.57 (782.78 square yards), 62 (743.33 square yards), 63 (755.87 square yards), 88 (860.56 square yards) and 96 (478.40 square yards) situated at Nandagiri Hills, Hyderabad, is violative of their fundamental rights guaranteed under Articles 14, 19(1)(g) and 300-A of the Constitution is the main question which arises for determination in this petition filed under Article 226 of the Constitution of India.

For ensuring planned development of the urban areas, the State Legislature enacted the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short, 'the Act'). Section 3(1) of the Act envisages constitution of urban development authority for an urban area or a group of urban areas, which is declared to be a development area by the government under Section 13(1). In terms of Section 3(2), every authority so constituted is

a body corporate by the name of the development area for which it is constituted and has perpetual succession and a common seal with power to acquire, hold and dispose of the property, both movable and immovable and to enter into contract. Such authority can sue and be sued in the particular name. Section 19(1) provides for disposal of the land by the authority constituted under Section 3(1). Section 20 postulates disposal of the government land. For the sake of convenient reference, these two sections are reproduced below:

"**19. Disposal of land by the Authority or the local authority concerned**:-(1) Subject to any directions given by the Government under this Act, the authority or, as the case may be, the local authority concerned may dispose of--

(a) any land acquired by the Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after taking or carrying out such development as it thinks fit; to such persons in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area concerned according to plan.

(2) The powers of the Authority, or as the case may be, of the local authority concerned with respect to the disposal of land under sub-section (1) shall be so exercised as to secure so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose.

(3) Nothing in this Act, shall be construed as enabling the Authority or the local authority concerned to dispose of land by way of gift, mortgage or charge, but subject to the aforesaid, any reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

20. Government vacant land:-(1) The Government, may by notification and upon such terms and conditions as may be agreed upon between the Government and the Authority, place at the disposal of the Authority all or any vacant lands belonging to or under the control of the Government situated in the development area (hereinafter referred to as "Government vacant land") for the purpose of development in accordance with the provisions of this Act.

(2) No development of any Government vacant land shall be undertaken or carried out except by, or under the control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such Government vacant land has been developed by or under the control and supervision of the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Government in this behalf.

(4) If any Government vacant land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Government, the Authority shall, by notification, replace it at the disposal of the Government upon such terms and conditions as may be agreed upon between the Government and the Authority."

In exercise of the power vested in it under Section 3(1), the State Government constituted HUDA for the urban areas of the twin cities of Hyderabad and Secunderabad.

One of the several activities undertaken by HUDA is to develop the land and dispose of the same in accordance with the provisions of Section 19. The State Government has also, from time to time, issued notification under Section 20 and placed vacant lands at the disposal of HUDA for the purpose of development in accordance with the provisions of the Act.

The petitioners are contractors. They are engaged in construction activities since 1988 and are said to have executed several works. They have also participated in the auctions conducted by HUDA from February, 2004 for sale of land in different parts of Hyderabad. The details of their participation in the various auctions and related facts are as under:

1) In the auction conducted by HUDA in February, 2004 for sale of Plot Nos.1 and 8 of Asif Nagar, Gudimalkapur, petitioner No.2, Sri G. Srinivas participated on behalf of M/s. Srinivasa Contractors and Engineers. He gave bid of Rs.3,78,81,091/-, but did not deposit the initial amount. Consequently, the earnest money of Rs.2,00,000/- deposited for each of the two plots was forfeited. Sri G. Srinivas filed Writ Petition No.2761 of 2006 with the complaint that the auction was conducted by HUDA without removing the encroachment from 60 feet and 40 feet roads and without removing the wild growth and yet the highest bid given by him was cancelled. The same was disposed of by the learned Single Judge on 20-2-2006 by directing HUDA to measure the existing roads and announce the same well in advance or on the date of auction to the intending bidders. However, the decision of HUDA to forfeit the earnest money deposit was not annulled.

2) In the meanwhile, HUDA announced fresh auction of Plot Nos.1 and 8 of Asif Nagar layout. In the auction conducted on 20-2-2006, Sri G. Srinivas gave highest bids of Rs.5,88,13,428/- and Rs.2,79,29,640/- respectively for the two plots on behalf of M/s. SSVG Engineering Projects (P) Ltd. However, he did not deposit the initial amount resulting in cancellation of the bids. He filed Writ Petition No.4961 of 2006 with the complaint that HUDA had not removed encroachments from the sites. He also filed WPMP. No.6306 of 2006 for restraining HUDA from forfeiting the earnest money deposit. The same was disposed of by the learned Single Judge on 14-3-2006 in the following terms:

"The respondent is directed not to forfeit the E.M.D. in respect of plot Nos.8 and 1, Asifnagar, New Layout pursuant to the auction conducted on 22-2-2006 and pursuant to the letter of the respondent dated 6-3-2006 in Lr.No.2409/EMC/HUDA/2006, pending further orders, provided, that the petitioner pays 1/4th of the initial deposit amount of Rs.1,42,03,357/- on or before 20-3-2006 and in default of payment of the said amount on 20th March, 2006,

it is open for the respondent to forfeit the E.M.D. amount along with interest.

This order has been passed keeping in view of the special facts and circumstances that as against the notified width of 60' road, there are two projections in two locations shown in the layout to an extent of 9' in respect of plot No.8 and 2' in respect of plot No.1 by the owner of plot No.2- a private person.

The petitioner seeks for removal of the said encroachments. Removal of the said encroachments and adherence to the terms and conditions of the auction notification will be dealt with appropriately in the writ petition."

3) On 21-2-2006, M/s. SSVG Engineering Projects (P) Ltd., through Sri G. Srinivas and Smt. G. Bharathi Devi participated in the auction held by HUDA for plot Nos.57, 62, 63 and 88 of Nandagiri Hills layout. They gave highest bids, but did not deposit the initial amount. Therefore, the competent authority forfeited the earnest money deposit of Rs.5,00,000/- in respect of each of the four plots. The details of these plots, the upset price, the bids given by Sri G. Srinivas and others and forfeiture of earnest money deposit are given below:

Name of the Complex	Date & Year of Auction	Plot No.	HUDA's upset price per sq. yard (Rs.)	Highest bid per sq. yard (Rs.)	Total sale price Rs.	EMD forfeited Rs. in Lacs.	Name of the Bidder with address	Name of the authorized person/ proxy
Nandagiri Hills	21.2.2006	57	25500	65700	51428646	5.00	Sri G.Srinivas, Plot No.89, ShanthiNagar, Masab Tank, Hyd.	
Nandagiri Hills	21.2.2006	62	25500	68100	50620773	5.00	M/s. SSVG Eng. Projects Pvt. Ltd., Plot No.89, D.No.10-2-289/56, Hyd-28.	Sri G. Bhaskar
Nandagiri Hills	21.2.2006	63	25500	75800	57294946	5.00	M/s. SSVG Eng. Projects Pvt. Ltd., D.No.10-2-289/56, Hyd-28.	Sri G. Bhaskar
Nandigiri Hills	21.2.2006	88	25500	85400	73491824	5.00	Smt. G. Bharathi Devi, D.No.10-2-289/56, Shanthi Nagar, Masab Tank, Hyd-28.	Sri G. Srinivas

4) Petitioner No.1, Sri H. Venkateswara Rao and petitioner No.3, Smt. G. Bharathi Devi along with one G. Bhaskar participated in the auction held on

28-2-2006 for the plots in Nalagandla Residential Complex. They gave highest bids for seven plots, but did not deposit the initial amount resulting in forfeiture of earnest money deposit of Rs.3,00,000/- in respect of each of the seven plots. The details of those plots, the upset price, the bids given by Sri H. Venkateswara Rao and others and forfeiture of earnest money deposit are given below:

Name of the Complex	Date & Year of auction	Block No.	HUDA's upset price per sq. yard (Rs.)	Highest bid per sq. yard (Rs.)	Total sale price Rs.	EMD forfeited Rs. in Lacs.	Name of the Bidder with address	Name of the authorized person/ proxy
Nalagandla	28.2.2006	I	5000	19200	40903104	3.00	H. Venkateswara Rao, Deepthi Nagar,Serilingam-pally, Hyd.	Sri G. Srinivas
Nalagandla	28.2.2006	II	5000	19000	52719680	3.00	H. Venkateswara Rao, Deepthi Nagar,Serilingam-pally, Hyd.	Sri G. Srinivas
Nalagandla	28.2.2006	VI	5000	22600	38922624	3.00	Sri G.Bhaskar, Plot No.89, Shanthi Nagar, M a s a b Tank, Hyd.	Sri M. Viswanath
Nalagandla	28.2.2006	VII	5000	19300	39471580	3.00	Smt. G. Bharathi Devi, D.No.10-2-289/56, Shanthi Nagar, Masab Tank, Hyd-28.	Sri M. Viswanath
Nalagandla	28.2.2006	VIII	5000	19000	38858040	3.00	H. Venkateswara Rao, Deepthi Nagar,Serilingam-pally, Hyd.	Sri G. Srinivas
Nalagandla	28.2.2006	IX	5000	20100	41107716	3.00	Sri G.Bhaskar, Plot No.89, Shanthi Nagar, M a s a b Tank, Hyd.	--
Nalagandla	28.2.2006	X	5000	22100	45198036	3.00	Sri G.Bhaskar, Plot No.89, Shanthi Nagar, M a s a b Tank, Hyd.	Sri G. Srinivas

5) Petitioner Nos.1, 3 and Sri G. Bhaskar challenged the forfeiture of earnest money deposit in respect of the plots of Nalagandla Residential Complex in Writ Petition No.16005 of 2006. The same was dismissed by the learned Single Judge on 4-8-2006.

6) On 16-7-2006, HUDA announced re-auction of Plot Nos.1 and 8 of Asif Nagar layout and Plot Nos.57, 62, 63, 88 and 96 of Nandagiri Hills. Immediately, thereafter, the petitioners filed a miscellaneous petition for extension of time fixed by the Court on 14-3-2006 for deposit of 1/4th of

the initial amount in respect of the two plots of Asif Nagar layout. That application is still pending. Simultaneously, the petitioners submitted five applications for the plots of Nandagiri Hills. They deposited Rs.20,00,000/- with each of these applications vide demand drafts dated 20th July, 2006. They were issued token Nos.1362 to 1366, but were not allowed to participate in the auction held on 21-7-2006. Respondent Nos.3 to 5 gave highest bids of Rs.57,000/-, Rs.65,000/- and Rs.61,000/- (per square yard) respectively for Plot Nos.57, 62 and 63.

Sri K.R. Prabhakar, advocate is said to have sent representation dated 21-7-2006 to the Vice-Chairman and Managing Director, HUDA, which was received in the office on 24-7-2006 at 12.30 p.m. and complained against the denial of opportunity to the petitioners to participate in the auction. After two days, the petitioners filed this petition.

The petitioners' prayer for annulment of the auction held on 21-7-2006 is founded on the assertions contained in the affidavit of Sri G. Srinivas (petitioner No.2) that the security guards employed by HUDA authorities had confined him and other petitioners in a room and they were not allowed to take part in the auction and that the HUDA authorities had done so with a view to favour other bidders, who could get plots at low prices. In paragraphs 5 and 7 of his affidavit, Sri G. Srinivas has averred that the petitioners were not allowed to participate in the auction proceedings despite the fact that they had obtained 5 tokens after depositing Rs.20,00,000/- along with the applications and, in this manner, their fundamental rights guaranteed under Articles 14 and 19(1)(g) of the Constitution have been violated.

In the counter affidavit filed by him, Sri P. Venkat Rama Reddy, Secretary, HUDA, has not only denied the allegation that the petitioners were confined in a room, but has also averred that they were not allowed to take part in the auction in view of the protest made by other bidders in the backdrop of their (the petitioners') past conduct. Sri Reddy has accused the petitioners of not coming to the Court with clean hands. According to him, even though Sri G. Srinivas was fully aware of the facts relating to the petitioners' participation in the earlier auctions, forfeiture of earnest money deposits and filing of three writ petitions in the High Court, he has deliberately omitted to make a mention of these facts in the affidavit filed in support of the writ petition. Sri Reddy has then referred to Clause 5(c) of the terms and conditions incorporated in the brochure issued by HUDA for auction of residential/commercial plots in July, 2006 and averred that a conscious decision was taken not to allow the petitioners to participate in the auction because of their past conduct of manipulating the price so that others may not able to give bids. As regards the

allegation of collusion of HUDA authorities with other bidders, Sri Reddy has averred that out of 79 persons, who had taken tokens of Rs.5,00,000/- (including the petitioners), 26 participated and gave bids ranging from Rs.51,000/- to Rs.65,000/- per square yard against the upset price of Rs.45,000/- per square yard.

In separate counter affidavits filed by them, respondent Nos.3 and 4 have averred that after giving highest bids, they deposited 1/4th of the total price. They have controverted the assertion of Sri G. Srinivas that HUDA authorities had colluded with other bidders and prevented the petitioners from participating in the auction. Both the respondents have averred that the auction proceedings were conducted smoothly without any objection from anyone. In paragraph 8 of his affidavit, Sri Dhiren Udeshi, who along with his brother, Vikram Udeshi participated in the auction and gave highest bid of Rs.57,000/- per square yard in respect of Plot No.57, averred that there were about 200 persons in the auction hall, a number of whom participated in the auction for plots in Nandagiri Hills layout. He has accused the petitioners of seeking the Court's intervention with an oblique motive by asserting that they have deliberately omitted to question auction of the plots for which the bids were Rs.46,000/- or Rs.47,000/- per square yard and they have chosen to target the plots for which the bids were Rs.57,000/- to Rs.65,000/- per square yard.

In the rejoinder affidavit, Sri G. Srinivas has denied the allegation of suppression of facts by asserting that the litigation instituted by the petitioners in relation to the earlier auctions has nothing to do with the issue of denial of opportunity to them to participate in the auction held on 21-7-2006. In paragraph 5 of rejoinder affidavit, Sri G. Srinivas has averred that in furtherance of order dated 14-3-2006 passed in WPMP.No.6306 of 2006 (Writ Petition No.4961 of 2006), he approached HUDA authorities for depositing the initial amount of Rs.1,42,03,357/-, but they did not accept the same and that WPMP. No.14630 of 2006 filed by him for extension of time to pay the initial amount is pending before the Court. He has then made a grievance that during the pendency of the miscellaneous petition, the authorities cancelled the bid and forfeited EMD of Rs.10,00,000/-. He has also averred that the highest bid of Rs.92,56,356/- given by him for Plot No.6 in Asifnagar layout was accepted and sale deed was executed on 4-7-2003. Likewise, Plot No.56-A of Nandagiri Hills layout was registered in favour of the petitioners in June 2006 though the highest bid given in respect of Plot No.46 was not accepted. He has contested the assertion made in the affidavit of Sri P. Venkat Rama Reddy that the petitioners had voluntarily left the premises and reiterated that they were prevented from participating in the auction. Along with the rejoinder affidavit, the petitioners have annexed 14 documents including copies of sale deeds dated 6-6-2006 and 4-7-2003 executed in respect of Plot

No.56-A of Nandagiri Hills and Plot No.6 of Asif Nagar layout.

Sri S. Ramachandra Rao, learned Senior Counsel argued that the action of the HUDA authorities to prevent the petitioners from taking part in the auction held on 21-7-2006 is ex facie illegal, arbitrary, malicious and violative of the doctrine of equality enshrined in Article 14 of the Constitution. Learned Senior Counsel extensively referred to the pleadings of the case and argued that justification offered by the HUDA authorities for not allowing the petitioners to participate in the auction despite the fact that they were issued tokens on payment of Rs.20,00,000/- with each of the five applications is wholly untenable and the auction held on 21-7-2006 is liable to be quashed. Learned Senior Counsel emphasised that the cases filed by the petitioners in relation to the auctions held earlier do not have any bearing on their right to participate in the auction held on 21-7-2006 and the respondents cannot justify their action to physically prevent the petitioners from participating in the auction merely because they have filed cases against the forfeiture of earnest money deposits. Sri Ramachandra Rao then argued that

Clause 5 (c) of the terms and conditions specified in the brochure cannot be invoked in the present case because the petitioners had neither exhibited disorderly conduct nor made any attempt to disturb the auction proceedings.

Sri T. Niranjan Reddy argued that the petitioners are not entitled to relief under Article 226 of the Constitution of India because they have not approached the Court with clean hands. Learned counsel emphasised that the previous litigation instituted by the petitioners has direct bearing on their conduct and by deliberately omitting to make a mention of the same, they succeeded in persuading the Court to pass an interim order in their favour. Sri Reddy strongly relied on Clause 5 (c) of the terms and conditions of auction and argued that the decision of HUDA authorities not to allow the petitioners to participate in the auction falls within the ambit of the expression “for any other sufficient reason” appearing in that clause. He submitted that the petitioners and their representatives gave very high bids for the plots of Asifnagar layout, Nandagiri Hills and Nalagandla Residential Complex, but did not make the initial deposit necessitating cancellation of the bids and re-auction of the plots resulting in huge waste of public money. Learned counsel argued that unusually high bids given by the petitioners and their representatives resulted in unwarranted escalation of price and this prevented other genuine bidders from opting for the plots.

Sri P.S. Rajasekhar and Sri V. Ajay Kumar adopted the arguments of Sri T. Niranjan Reddy and submitted that the writ petition should be dismissed because the petitioners have deliberately refrained from impleading not only their clients but also the other successful bidders as party respondents. Learned counsel argued that non-impleadment of the other successful bidders, who participated in the auction held on

21-7-2006 should be treated fatal to the maintainability of the writ petition.

We have given serious thought to the respective arguments and scrutinised the records.

We shall first consider whether the petitioners are guilty of not coming to the Court with clean hands.

For many centuries, the Indian society had cherished two basic values of life, namely, 'Satya' and 'Ahimsa'. One of these values i.e., 'Satya' constituted an integral part of the judicial system at various levels in our country. In pre-independence era, the people used to feel proud to tell truth in the Court proceedings irrespective of the consequences. However, post-independence period has seen a dramatic devaluation of the ethics. The materialism has over-shadowed the old ethos and quest for personal gain is so immense that the people do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in court proceedings. In a substantial number of cases, the litigants resort to falsehood. A new creed of litigants has developed in the last 40 years, who do not have any respect for truth. They can go to any length to make false statements, misleading statements and suppress facts and documents with a view to persuade the Court to pass favourable orders. In order to meet this challenge, the Courts have evolved and will continue to evolve new mechanism to show doors to the litigants who do not come with clean hands. One of the rules laid down by the courts is that a litigant who touches the pure fountain of justice with tainted hands is not entitled to hearing on the merits of the case.

In **Hari Narain v. Badri Das**[1], the Supreme Court upheld the objection raised on behalf of the respondents that the appellant was guilty of misstating the facts and revoked the leave by making the following observations:

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Art.136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterizes as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

In **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[2], the Supreme Court held that a party which has misled the Court in passing an order in its

favour is not entitled to be heard on the merits of the case.

In **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], the Supreme Court declined relief to the appellant, who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act on account of interim stay order passed in a writ petition. While dismissing the special leave petition, the Court observed:

> "Curiously enough, there is no reference in the Special Leave Petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the Special Leave Petitions are liable to be rejected. It is well settled in law that the relief under Art.136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the Special Leave Petitions."

In **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], the Supreme Court held that where a preliminary decree was obtained by playing fraud on the Court in-as-much as a vital document was withheld in order to gain advantage on the other side, such party deserves to be thrown out at any stage of the litigation.

In **Nand Lal and others v. State of Jammu and Kashmir and another**[5], a learned Judge of Jammu and Kashmir High Court held that if a party does not disclose all the facts correctly and candidly, he is not entitled to be heard on the merits of the case. Some of the observations made by the learned Single Judge are reproduced below:

> "Where the petitioners under Art. 226 have not stated the relevant facts in the petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. And even if the petitioners have a good case on merits, the Court will be entitled to decline to go into the merits and dismiss their petition, because the conduct of the petitioners has been such as to mislead the Court."

Reference also deserves to be made to some of the English decisions on this subject. In **Rex v. Kensington**[6], Cozens Hardy M.R. made the following observations on the conduct of a party in an ex-parte application in the following words:

> "On an ex-parte application uberrima fides is required, and unless that can be established if there is anything like deception practiced on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

Lord Scrutton L.J., said:

> "It has for many years the rule of the Court and one which it is of the greatest

importance to maintain, that when any applicant comes to the Court to obtain relief on an ex-parte statement, he should make a full and fair disclosure of all the material facts, facts not law …

… The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

In **R v. Churchwardens of All Saints Wigan**[7], Lord Haterlay observed:

"Upon a prerogative writ there may arise many matters of discretion which may induce the Judges to withhold the grant of it – matters connected with delay or possibly with the conduct of the parties."

In **Rex v. Garland**[8], it was held:

"Where a process is ex debito justitiae, the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bona fides."

The proposition which can be culled out from the above noted judgments is that the High Court will not come to the aid of a person, who is guilty of concealing/suppressing material facts or making a false or misleading statement.

The facts brought on the record of this case shows that the petitioners had participated in the auction held by HUDA for the plots of Asif Nagar layout, Nandagiri Hills and Nalagandla Residential Complex in February, 2004 and June, 2006. They gave their highest bids for different plots, but did not deposit the initial amount, which led to cancellation of bids and forfeiture of the earnest money deposits to the tune of Rs.55,00,000/-. Writ Petition No.2761 of 2006 filed by petitioner No.2 – G. Srinivas for nullifying the auction held for Plot Nos.1 and 8 of Asifnagar layout was disposed of by the learned Single Judge on 20-2-2006 by directing the respondents to measure the existing roads and announce their actual width at the site well in advance or on the date of public auction. However, forfeiture of the earnest money deposited by the petitioners was not quashed. In Writ Petition No.4961 of 2006, the learned Single Judge gave direction to the petitioners to deposit 1/4th of the initial amount as a condition for not effecting forfeiture of earnest money deposit, but the concerned petitioners did not avail benefit of the interlocutory order. Writ Petition No.16005 of 2006 filed by G. Bharathi Devi (petitioner No.3 herein), Y. Bhaskar and H. Venkateswara Rao (petitioner No.1 herein) for issue of a mandamus to the respondents to handover possession of various plots in Nalagandla Residential Complex was dismissed by the learned Single Judge on 4-8-2006 on the ground that an effective alternative remedy was available to the petitioners by filing civil suit. All this has direct bearing on the conduct of the petitioners. Sri G. Srinivas, who filed affidavit in support of the writ petition, was fully aware of these facts, but he deliberately

omitted to make a mention thereof in the first affidavit. In our considered view, this was done by the deponent with a view to mislead the Court in believing that even though the petitioners have not done any wrong, the HUDA authorities adopted unconstitutional methods and prevented them to take part in the auction held on 21-7-2006 with a view to favour other bidders. We do not find any slightest hesitation to observe that if the Court had been made aware of the fact that after giving very high bids in the earlier auctions held by HUDA in February, 2004 and June, 2006 for disposal of plots in Asifnagar layout, Nandagiri Hills and Nalagandla, the petitioners did not deposit the initial amount resulting in forfeiture of earnest money deposit and re-auction of the plots, interim order dated 27-7-2006 would not have been passed.

The following are the other reasons for declining relief to the petitioners:

1) Although the petitioners have challenged the auction held on 21-7-2006, they have refrained from impleading the successful bidders as parties to the writ petition. Three of them i.e. respondent Nos.3 to 5 got themselves impleaded as parties and have contested the writ petition. The remaining successful bidders are not before the Court. If the relief prayed for by the petitioners is granted and the auction conducted by HUDA on 21-7-2006 is declared as violative of Article 14 of the Constitution and quashed, all the successful bidders will be adversely affected. However, as some of them are not parties to the writ petition, it is not possible to grant declaration of invalidity in favour of the petitioners and consequential direction to HUDA to re-auction the plots.

2) Clause 5 (c) of the terms and conditions of auction embodied in the brochure issued by HUDA, on which reliance has been placed by the respondents for justifying the exclusion of the petitioners from the process of bidding, reads as under:

"**5. Auction, bidding and knocking down:**

… … …

(c) In case of any disorderly conduct or disturbance by the applicant or the person accompanying the applicant, in or around the auction place or for any other sufficient reason, the Auction Officer shall be entitled to exclude such person/s from the auction premises, cancel their token and/or initiate criminal proceedings under law."

The expression "or for any other sufficient reason" contained in the above reproduced clause has not been defined under the Act or the rules framed thereunder. Therefore, the same has to be interpreted in the context in which Clause 5 (c) has been incorporated in the brochure and, if so done, we are convinced that refusal of HUDA authorities to allow the petitioners to participate in the auction in the backdrop of their previous conduct cannot be termed as wholly arbitrary or capricious. Undoubtedly, the manipulations made by the petitioners in the earlier auctions resulted in preventing other bidders to give reasonable offers for different plots. Not only this, HUDA had to litigate in the matter and even re-auction the plots. The repeat performance of the petitioners in

different auctions shows that they were never serious in taking the plots for which the bids were given. Rather, it is indicative of their effort to artificially increase the price by speculative bids. This, in our considered view, provided sufficient reason for not allowing the petitioners to participate in the auction.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.19394 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, C.J.

August , 2007.

C.V. NAGARJUNA REDDY, J.

ARS

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[1] AIR 1963 SC 1558
[2] AIR 1983 SC 1015
[3] AIR 1991 SC 1726
[4] JT 1993 (6) SC 331
[5] AIR 1960 J & K 19
[6] 1917 (1) KB 486
[7] (1876) 1 A.C. 611,
[8] (1870) 39 L.R. Q.B. 269